

Falls Church, Virginia 20530

MAR 12 2014

File: D2013-220

Date:

In re: DOUGLAS H. COONER

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

ON BEHALF OF DHS: Catherine M. O'Connell, Disciplinary Counsel

ON BEHALF OF EOIR: Jennifer J. Barnes, Disciplinary Counsel

The respondent will be disbarred from practice before the Department of Homeland Security (DHS), the Board and the Immigration Courts.

On June 20, 2013, the Disciplinary Board of the Alabama State Bar issued a report and order disbarring the respondent from the practice of law in Alabama. On September 10, 2013, the Supreme Court of Alabama affirmed the report and order. Consequently, on January 15, 2014, the Department of Homeland Security (the "DHS") initiated disciplinary proceedings against the respondent and petitioned for the respondent's immediate suspension from practice before the DHS. The Disciplinary Counsel for the Executive Office for Immigration Review (EOIR) then asked that the respondent be similarly suspended from practice before EOIR, including the Board and the Immigration Courts. On February 4, 2014, the Board suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding.

The respondent filed a timely answer to the allegations contained in the Notice of Intent to Discipline. 8 C.F.R. § 1003.105(c)(1). In the answer, the respondent admits, at least in part, allegations one through four of the Notice of Intent to Discipline. The respondent denies the remaining allegations. The respondent also denies that he is subject to a final order of discipline in Alabama. The respondent asserts that the June 20, 2013, order of the Disciplinary Board of the Alabama State Bar is the subject of a pending appeal. The respondent also claims that disbarment is not the proper discipline and that summary discipline is not appropriate. The respondent requests a hearing and moves for an order setting aside his immediate suspension from practice before the DHS, the Board and the Immigration Courts.

The DHS, on the other hand, has filed a motion for summary adjudication. In the motion, the DHS maintains that the respondent's answer does not show that any material issues of fact are in dispute regarding the basis for discipline. The DHS therefore argues that the Board has the authority to retain jurisdiction over the respondent's case and issue a final order of discipline. The DHS further contends that the Board should impose the recommended discipline of disbarment.

We agree with the DHS that the statements and evidence the respondent has submitted with his answer to the Notice of Intent to Discipline (NID) are not sufficient to establish that there is a material issue of fact in the respondent's case. The respondent claims that the June 20, 2013,

report and order of the Disciplinary Board of the State Bar of Alabama is on appeal to the Supreme Court of Alabama and that the Alabama Supreme Court's September 10, 2013, affirmance of the report and order was not an affirmance on the substantive merits. In support of his assertions, the respondent has submitted a document dated October 24, 2013, from the Alabama Supreme Court acknowledging the filing of an appeal. The respondent also has submitted a copy of a motion for a new trial that he filed with the Disciplinary Board of the Alabama State Bar and an October 4, 2013, decision denying the motion.

In paragraph number 15 of his answer to the NID, however, the respondent acknowledges that his pending appeal relates to the denial of his motion for a new trial by the Disciplinary Board. In paragraph number 19 of his answer, the respondent also admits that the Alabama State Bar and the clerk of the Supreme Court of Alabama have interpreted the September 10, 2013, ruling of the Alabama Supreme Court as a final determination on the substantive merits of his disciplinary proceedings. The respondent claims that he disagrees with this interpretation, but the evidence in the record shows that, pursuant to the September 10, 2013, ruling, a notation has been entered on the Alabama Supreme Court Roll of Attorneys that the respondent is disbarred effective September 10, 2013. Based on these facts, we find that there is not a meaningful dispute over a material issue of fact in the respondent's case. Accordingly, summary disciplinary proceedings are appropriate. See 8 C.F.R. § 1003.106(a)(1).

Further, we agree that disbarment is an appropriate sanction in light of the respondent's disbarment in Alabama. The respondent claims that he did not receive a fair hearing or due process in his disciplinary proceedings in Alabama, but he has not submitted sufficient information to establish that there was an infirmity of proof in the underlying proceeding, that the underlying proceeding was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process, or that the imposition of discipline by the adjudicating official would result in grave injustice. See 8 C.F.R. § 1003.103(b)(2)(i) – (iii).

Finally, the respondent has not established that setting aside the immediate suspension order in his case is appropriate. See 8 C.F.R. § 1003.103(a)(4).

Based on the foregoing, the respondent is disbarred from practice before the DHS, the Board and the Immigration Courts. As the respondent is currently under our February 4, 2014, order of suspension, we will deem his disbarment to have commenced on that date.

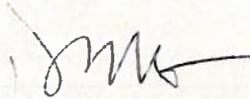
ORDER: The Board hereby disbars the respondent from practice before the Board, the Immigration Courts, and the DHS.

FURTHER ORDER: The respondent is instructed to maintain compliance with the directives set forth in our prior order. The respondent also is instructed to notify the Board of any further disciplinary action against him.

FURTHER ORDER: The respondent may petition this Board for reinstatement to practice before the Board, the Immigration Courts, and the DHS under 8 C.F.R. § 1003.107.

D2013-220

FURTHER ORDER: As the Board earlier imposed an immediate suspension order in this case, today's order of the Board becomes effective immediately. 8 C.F.R. § 1003.105(d)(2).

A handwritten signature in black ink, appearing to be "JMS", is written above a horizontal line.

FOR THE BOARD